

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Rehearing pursuant to D.C. Court of Appeal's remand in the application No. 12256 of the Kenmore Joint Venture, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a modification of BZA Order No. 7792 granting permission to continue a parking lot providing accessory off-street parking for the Kenmore Apartments in the R-1-B District at Legation Street and Chevy Chase Parkway, N.W. (Square 1870, Lots 23-29, 815 and 816).

HEARING DATE: January 24, 1979  
DECISION DATE: April 4, 1979

FINDINGS OF FACT:

1. The subject property is located on the west side of Chevy Chase Parkway, south of Legation Street, N.W.
2. In BZA case No. 7792, by Order dated July 15, 1964, the Board granted approval for the continuation of a parking lot on the subject property. The Board did not set a time limit for expiration of its approval of the lot, but the Board did impose the following condition:

The parking spaces authorized under the terms of this Order will require the owner of the land upon which such parking is to be located to agree to become a party to a covenant with the District of Columbia to run with the land and to be binding upon him and his successors in title, which requires that the area approved for off-street parking shall be reserved exclusively for that purpose so long as the improvements to be served exist or so long as said accessory off-street parking is required by the Zoning Regulations.

3. On August 5, 1964, the owner of the property executed a covenant with the District of Columbia, which reads in pertinent part as follows:

/The/ parties of the first part do further covenant that the aforesaid right to use said Tract #2/sub-ject property/ for accessory parking of motor vehicles shall be appurtenant to said Tract #1 so long as said Tract #1 and the improvements thereon are used as apartment buildings or for any other purpose requiring accessory passenger automobile parking in accordance with the Zoning Regulations of the District of Columbia.

4. The accessory parking services the Kenmore apartments, located at the southeast corner of Connecticut Avenue and Legation Street, which contains 372 dwelling units. The apartments were erected before May 12, 1958, and are located in an R-5-C District. Sub-section 7202.1 of the Regulations requires that one parking space be provided for every three dwelling units in the R-5-C District. The Kenmore thus would require 124 spaces, if Article 72 were applicable.

5. There are presently 151 parking spaces for the Kenmore Apartments. Of this total eighty-seven are in current use and include forty-eight spaces located in the garage within the building and thirty-nine surface parking spaces. There are sixty four surface parking spaces presently blocked off and unused. It is the latter sixty-four spaces for which the applicant seeks to modify the covenant in order to erect houses on that portion of the site.

6. The applicant proposes to provide 124 spaces in the area where the existing eighty-seven used spaces are located. Of the total of 124, eighty-six would be located in and adjacent to the garage, and thirty-eight would be located in a surface lot. Access to these spaces would be from two driveways from Legation Street.

7. The applicant had previously filed a request with the Zoning Commission for rezoning of the unused parking lot from R-1-B to R-5-A in order to construct townhouses on the site. After receiving the advice of the Corporation Counsel, the Zoning Commission dismissed the application without prejudice, in order that the applicant could file an application with the Board to modify the Board's previous approval and have the covenant removed. If the Board approved this application, the applicant intended to file a new application for rezoning with the Zoning Commission.

8. By BZA Order No. 12256, effective August 24, 1977, the Board DENIED the application. The Board noted that the covenant entered into by the owner of the Kenmore contained language which differed from that contained in the Board's Order in Case 7792. The Board's previous Order was written so as to require that the area approved for parking be reserved exclusively for parking if either of two situations existed: i.e., if the improvements to be served existed or if the Zoning Regulations required that the parking be provided. Parking can be otherwise provided to meet the requirements of the Zoning Regulations. However, the Kenmore Apartments were still in existence, and the Board concluded that its' prior Order would require the continuation of the exclusive parking use.

The Board further noted that the covenant was entered into willingly by the owner of the property, in order to comply with and accept the benefits of the Board's Order, in order to use the premises for parking. The Board concluded that while the language of the covenant differed somewhat from the language of the Order, the covenant was not more restrictive than the Order in any way material to this case. In sum the covenant carried out the intent of the Board.

The Board also noted that the demand for parking was originally very strong which encouraged the owners of the Kenmore to seek approval for the parking lot in the first place. The demand for spaces could increase again in the future as it had fluctuated in the past. There was an existing shortage of on-street parking on the streets closest to the Kenmore Apartments. The Board concluded that the exclusive parking use originally approved by the Board should be retained, in order to protect the surrounding lower density residential neighborhoods from the potential on-street parking which might result from the Kenmore. Based on these findings and conclusions, the Board was of the opinion that the application was not consistent with the intent and purposes of the Zoning Regulations, and that the application may have an adverse effect on neighboring properties.

9. The Board's Order was appealed to the D.C. Court of Appeals. By decision of August 23, 1978, the D.C. Court of Appeal reversed the Order of the BZA and remanded the case for further proceedings. It held that the condition in Order No. 7792, as well as the covenant entered into with the District of Columbia, required that only so much of the area encompassed by the subject nine lots as would have been needed to permit the Kenmore Apartments to provide in 1964 the total number of off-street parking spaces required under Article 72 of the Zoning Regulations must be utilized exclusively for that purpose and that it remained for the BZA now to consider Kenmore's proposed rearrangement of the accessory parking spaces as an application for a special exception

10. The rehearing of the case on January 24, 1979 pursuant to the Court's remand was limited to the following designated issues:

1. Does the applicant's proposed rearrangement of the parking spaces for the Kenmore Apartments provide the minimum of 124 parking spaces as required under the Zoning Regulations.
2. Is the applicant required to provide that the 124 parking spaces be nine by nineteen feet in size and does the proposed rearrangement provide 124 spaces of this size.

11. The applicant proposes to provide 124 parking spaces, the number of spaces required under the Zoning Regulations in effect in 1964. The applicant argues that since the Kenmore Apartments were providing forty-eight spaces in the building in 1964, an area sufficient to allow seventy-six additional spaces will be needed to bring the total to 124. As to those forty-eight spaces the applicant contends that since the Kenmore Apartment's were erected prior to May 12, 1958, the effective day of the current Zoning Regulations, it has non-conforming rights with respect to the number and the size of those spaces and that only the seventy-six additional spaces to be obtained through the rearrangement of the parking area on the subject site would need to be of a nine foot by nineteen foot size.

12. The Office of Planning and Development, by report dated January 18, 1979, stated that the parking plan supplied by the applicant showing rearrangement of the parking spaces indicates that there will be 124 spaces provided for the 372 apartments. This level of off-street parking meets the requirements of the Zoning Regulations for the R-5-C zoning district which require one space for each three dwelling units. Of the total of 124 parking spaces, seventy-one spaces meet the dimensional nine feet by nineteen feet and locational requirements of the Zoning Regulations. The remaining fifty-three spaces would require relief from the Board in view of the existing Zoning Regulations.

The Office of Planning and Development reported further that:

1. Twenty-four spaces are located in the open court created by the two arms of the U shaped building. Seventeen of these spaces are nine feet by nineteen feet in size as required by the Zoning Regulations. A special exception would be required due to their location in a court.
2. Sixteen spaces are located at a distance of less than ten feet from the building and would require a variance from the Board as to the location. Most of these sixteen spaces are located immediately next to the building.
3. Three spaces are deficient in depth. The depth varies from eighteen feet four inches to eighteen feet ten inches instead of the required nineteen feet.
4. Ten spaces are deficient in width ranging from seven feet ten inches to eight feet nine inches instead of the required nine feet.

The Office of Planning and Development noted that the building was constructed prior to 1958. Since zoning is not retroactive, it would appear that the parking spaces less than nine feet by nineteen would be permitted at that time. However, due to the 1964 Board Order and the agreement with the applicant, OPD recommended that the parking conform to the Zoning Regulations applicable in 1964, and that nine by nineteen feet parking spaces should be required. The Board so finds.

13. Advisory Neighborhood Commission - 3G, by letter of January 16, 1979, reported that at its public meeting on January 15, 1979, it voted to present to the BZA the following resolutions relating to the existing and planned parking facilities of the Kenmore Apartments:

1. ANC-3G opposes any proposed arrangement of the Kenmore parking spaces which does not provide 124 spaces of the legal size, nine feet by nineteen feet and six and one half feet as required by the Zoning Regulations, and which does not fully comply with applicable fire and safety regulations.

2. ANC-3G requests that the BZA refuse to accept for the record, or in evidence, any map or plan showing a proposed arrangement of parking spaces unless the same is in scale and shows on its face the name of the preparer, date of preparation, and is properly authenticated.

14. Advisory Neighborhood Commission - 3G and other opposition, at the public hearing, argued that the applicant is seeking approval of a new accessory parking plan that includes parking in Square 1870, which is zoned R-1-B and that this can be approved only as a special exception under Sub-Paragraph 3101.410 of the Zoning Regulations. The opposition further argued that the applicant's new parking plan does not comply with the off-street parking requirements of Article 72 of the Zoning Regulations as to size of spaces, vertical clearance, screening and buffering, among other items, and that the Court in referencing Article 72 of the Zoning Regulations in its opinion was not limiting itself merely to the number of spaces required. The opposition argued that whatever non-conforming rights the applicant had because the Kenmore was built before 1958 were covenanted away in 1964 and that the proposed plan in eliminating guest parking spaces creates a further parking problem for the neighborhood residents.

15. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing these issues and concerns of the ANC and other parties in opposition, the Board at the public meeting of March 7, 1979 took the following actions:

- a. Determined that all parking spaces must conform to the requirements of Article 72.
- b. Disapproved the applicant's proposed parking layout in the courtyard of the building.
- c. Disapproved the applicant's proposed parking plan for those spaces located away from the building.

The Board requested the applicant to submit a revised parking proposal for 124 spaces which meets the following requirements:

- a. All spaces conform to the requirements of Article 72.
- b. The layout of the building courtyard if used for parking, shall include an area for planting and landscaping no less than was provided for the building originally. The applicant should show any existing landscaping to be retained, and plans for any additional planting or landscaping.
- c. Any parking spaces located outside of the building or court shall be appropriately landscaped and screened from surrounding properties. The applicant shall show the location, nature and extent of any existing landscaping or screening to be retained and plans for any additional planting or landscaping.

16. In reply to the Board's directions of April 4, 1979, the applicant submitted a new set of plans, dated March 21, 1979. As stated above, the applicant is proposing to provide 124 parking spaces in the area which previously accommodated eighty-seven cars. The Board finds the new set of plans unresponsive to its directions. The over-all impact of the plan evidences a total disregard for the environment. The courtyard is jammed tight with cars. The attempts at landscaping and screening are offensive and unaesthetic not only to the tenants of the Kenmore Apartments, but also to the owners of adjacent or nearby property and the plans offer no protection to the owners of the adjacent or nearby property owners as required under the Zoning Regulations.

#### CONCLUSIONS OF LAW:

Based on the entire record, including the opinion of the D.C. Court of Appeals No. 12544, decided August 23, 1978, the Board concludes that the applicant is seeking a special exception under the provisions of Article 72 of the Zoning Regulations. More particularly the applicant is seeking a modification of BZA Order No. 7792 which granted permission to continue the subject parking lot. In order to obtain this relief, the applicant must comply with all of the provisions of Article 72 and must meet the standards of Subsection 8207.2 of the Zoning Regulations. Without determining if the applicant has met the provisions of Article 72 as to the required number of spaces, size, clearance the Board concludes that it is clear that the applicant has not met all the requirements for off-street parking under Article 72 as to screening, landscaping and protection of the property of the owners of adjacent or nearby property.

The subject lot is located in an R-1-B District. The R-1 District is designed to protect quiet residential areas now developed with one family detached dwellings and adjoining vacant areas likely to be developed for such purposes. The regulations are designed to stabilize such area and to promote a suitable environment for family life. For that reason only a few additional and compatible uses are permitted. An accessory off-street parking lot, such as the subject lot, is a use permitted if approved by the Board of Zoning Adjustment. Accordingly, it is incumbent upon the applicant to meet his burden. The Board conclude that it has not. The Board further concludes that the relief sought under the submitted revised parking plan cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and Maps and without affecting adversely the use of neighboring property. The Board has addressed the issues and concerns of the ANC. Accordingly, it is ORDERED that the application, as amended herein pursuant to the D.C. Court of Appeal's Remand, is DENIED.

VOTE: 4-0 (Theodore F. Mariani, Charles R. Norris, Chloethiel Woodard Smith and William F. McIntosh to DENY, Leonard L. McCants ABSTAINED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

23 JUL 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."